

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re Application of  
**Goerlitz, et al**

Examiner: Anderson, Rebecca L.

Application No.: **10/789,019**

Art Unit: 1626

Filed: **February 27, 2004**

Title: **Diarylcylalkyl derivatives, process for  
their preparation and their use as  
pharmaceuticals**

**DECLARATION UNDER 37 CFR 1.116(e)**

Commissioner for Patents  
P. O. Box 1450  
Alexandria, VA 22313-1450


I, Barbara E. Kury, do declare and state:

1. I am the patent attorney responsible for prosecuting the above-identified application in the name of the Applicant.
2. Applicant received an Office Action mailed April 20, 2005, wherein the Examiner acknowledged applicant's claim for foreign priority by German application DE10308353.7 with filing date February 27, 2003. However, the Examiner stated that Applicant could not rely upon the foreign priority papers to overcome certain rejections based on 35 USC §(102(a) as described in said April 20th Office Action because an English translation of the German application had not been made of record in accordance with 37 §CFR 1.55.
3. Applicant forwarded an English translation of DE10308353.7 with a paper dated August 22, 2005. Said translation, through inadvertent error, was not accompanied by a statement required under 37 CFR §1.55(a)(4)(i)-(ii) that the translation of the certified copy is accurate (hereinafter, "Statement").
4. Applicant received an Office Action mailed February 15, 2006, wherein the Examiner stated that the translation was not entered because it was not accompanied by the Statement required under 37 CFR §1.55(a)(4)(i)-(ii).
5. Applicant provided the Statement to the USPTO in a paper dated July 17, 2006. Through inadvertent error, I did not include with the Statement an affidavit setting forth good and sufficient reasons why the Statement was necessary and was not earlier presented pursuant to 37 CFR §1.116(e) (hereinafter, "Affidavit").
6. Applicant received an Advisory Action mailed July 31, 2006, wherein Applicant was notified that the Statement was not entered because it was not accompanied by the Affidavit. I only realized the error upon receipt of said Advisory Action and I prepared this paper on behalf of Applicant to correct the unintentional mistake.

7. I believe that this paper fulfills the requirements under 37 CFR §1.116(e).

I declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true, and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issuing thereon.

Date: 8/10/06

  
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